

TO GRANT THE FORT WORTH AND DENVER RAILWAY
COMPANY A RIGHT OF WAY THROUGH THE INDIAN
TERRITORY.

FEBRUARY 25, 1884.—Committed to the Committee of the Whole House on the state of
the Union and ordered to be printed.

Mr. WELLBORN, from the Committee on Indian Affairs, submitted the
following

R E P O R T :

[To accompany bill H. R. 5441.]

*The Committee on Indian Affairs, to whom was referred bill H. R. 3434
respectfully submit the following report :*

This bill grants a right of way through the Indian Territory, from any point on the Red River on the southern boundary of the Territory, to the Fort Worth and Denver City Railway Company, a corporation created by and existing under the laws of the State of Texas.

In recent reports submitted from this committee recommending passage of similar bills, first, that granting right of way through said Territory to the Gulf, Colorado and Santa Fé Railway Company, and, again, that granting the right of way to the Southern Kansas Railway Company through the Indian Territory, the committee said :

The right of eminent domain in the Federal Government over the Indian Territory is the principle on which the bill has been constructed. Its precedent is found in a law enacted by the Forty-seventh Congress, granting a similar right of way to the Saint Louis and San Francisco Railway Company.

The limitations which the bill now reported throws around the exercise of the right of eminent domain, have been conformed, as far as circumstances would allow, to those provided by the laws of all the States where the same right is exercised by State authority within State limits. The rights of the Indians are fully protected, both in tribal and individual relations. Suitable provisions are made for the ascertainment and payment to the Indians of just and fair compensation for property taken from and damages done to them. Where the company and the respective tribes, or the company and individual occupants of the land fail to agree, a board of appraisers is constituted to determine the amounts of compensation, and if a tribe or individual occupant should be dissatisfied with the award of the appraisers, such tribe or occupant has substantially the same resort to the courts of the country that is allowed to the citizens of a State whose property under like circumstances is appropriated for public use. The details of the bill in this particular are believed by the committee to be appropriate and fully adequate to the purposes they contemplate. They protect fully and amply all the rights of the Indians.

The main questions presented by the bill are two :

First. Has Congress the power to grant the proposed right of way ?

Second. Is there any necessity for the exercise of this power ?

To both of these questions the committee make affirmative answers.

The power of Congress, as already stated, rests upon the right of eminent domain. That the Federal Government possesses this right over the Indian Territory it seems to the committee cannot be seriously questioned. The Indian Territory is a part of the United States and subject to its jurisdiction. This jurisdiction is now, and has been for a long number of years, exercised in a variety of ways.

The executive branch of the Government has its civil officers and agents located throughout the Territory. Postal routes permeate it as they do the States and other Territories. The Army occupies it. The judicial power of the Government is also extended over it in certain cases. In a word, whenever exigencies have required, the potential jurisdiction of the Government has been called into actual exercise. While existing laws allow to the tribes which occupy this country certain sorts of domestic or local government, there is nothing in the relations which these tribes sustain to the Federal Government which denies to the latter ultimate jurisdiction and sovereignty over them.

This proposition is abundantly established not only by the practices of the Government in the various instances cited, but also by an unbroken line of *judicial constructions*. Such jurisdiction and sovereignty embrace within their scope the right of eminent domain. So long as the Federal Government possesses this jurisdiction and sovereignty it must have the right also. No department or departments could divest the Government of this right, save and except by an absolute cession of the Territory to some foreign power.

The committee are equally convinced that there is a necessity for the exercise of the power.

The Indian Territory divides prosperous and growing States and Territories. On the west is New Mexico, on the north Colorado and Kansas, on the east Missouri and Arkansas, and on the south Texas. The rapidly increasing productions of these respective sections of country demand corresponding facilities for mutual exchanges. It is needless to add that in this age railroads alone furnish such facilities.

There is now but one line of railroad running north and south across the Indian Territory. This line of road has therefore a monopoly of transportation and travel in the directions indicated. The commercial and other national interests, not only of adjacent States but of the whole country, demand competing lines. Whenever private capital without Government aid proposes to meet this demand, it should be allowed to do so.

The conclusions of the committee on the two main questions which the bill presents may be clearly stated in one sentence, namely, that Congress has the power to grant rights of way through the Indian Territory, and that there is an occasion for the exercise of this power whenever private capital in *good faith* proposes to build a new road.

That the condition on which an occasion for the exercise of the power arises exists in this case has been satisfactorily shown to the committee.

The Fort Worth and Denver City Railway Company has constructed and owns 116.3 miles of railway, but operates 121 miles of railway from the city of Fort Worth to Wichita Falls, in Wichita County, Texas, within 10 miles of the Indian Territory, and the main line of the road has been located, and the right of way secured to the northwestern boundary of the State, through the Pan-handle of Texas, on its line to Denver City, Colo. The company has no floating liability and a bonded debt of \$20,000 per mile on its constructed road.

The committee therefore report the accompanying bill as a substitute for bill H. R. 3434, and recommend its passage.